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AUG 06 2004

OFFICE OF PETITIONS

In re Application of :
Eby, Smith, Serrault, Vetting, and : DECISION REFUSING STATUS
Gaska : UNDER 37 CFR 1.47(a)
Application No. 10/626,080 :
Filed: 24 July, 2003 :
Atty Docket No. 29618/38939 :
:

This is in response to the petition filed under 37 CFR 1.47(a) on 6 May, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.
Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 24 July, 2003, without an executed oath or declaration. Accordingly, on 20 April, 2004, Initial Patent Examination Division mailed a Notice to File Missing Parts of Nonprovisional Application, requiring an executed oath or declaration and a surcharge for its late filing. A two (2) month period for reply was set.

In response, on 6 May, 2004, petitioners filed the late-filing surcharge, and a declaration naming David C. Eby, Aaron W. Smith, Jayson J. Serrault, Tobin Vetting, and Gilius A. Gaska as joint inventors, signed by all joint inventors except Serrault on behalf of themselves and joint inventor Serrault.

Petitioners state that joint inventor Serrault was sent a copy of the declaration, but that it was returned as undeliverable.

Petitioners further state that efforts to locate a new address for Serrault have been unsuccessful.

A grantable petition under 37 CFR 1.47(a) requires:

- (1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and
- (5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1).

In regards to item (1), if the application is returned as undeliverable, petitioners should submit a copy of the envelope showing that the envelope addressed to the non-signing inventor at his last known address was returned as undeliverable by the post office. Details of the efforts made to locate the non-signing inventor must be set forth in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Petitioners have not provided a copy of the envelope addressed to the last known address of the non-signing inventor which was returned as undeliverable by the post office.

Additionally it is noted that a different mailing address is provided for Serrault on the declaration than the address which is stated as the last known address. If the address on the declaration is an address at which Serrault has been known to receive mail, petitioners should attempt to contact him at that address.

In regards to item (2), the declaration contains is defective in that it contains non initialed and/or non-dated alterations.¹ Specifically, there is an uninitialed and/or undated alteration in the signature block for joint inventor Eby. A new oath or declaration in compliance with 37 CFR 1.63 and 1.67, signed by the inventor to whom the error or deficiency relates is

¹See 37 CFR 1.52(c).

required.²

The petition fee of \$130.00 has been charged to counsel's deposit account, No. 13-2855, as authorized in the present petition.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 872-9306
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
220 20th Street S.
Customer Window, Mail Stop Petition
Crystal Plaza 2, Lobby, Room 1B03
Arlington, VA 22202

Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.

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Office of Petitions

²37 CFR 1.67(a) (2).